



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

September 11, 2018

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sergey Gabinsky, M.D.



Amy T. Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 500
Garden City, New York 11530

David W. Quist, Associate Attorney
Bureau of Professional Medical Conduct
Division of Legal Affairs
New York State Department of Health
2512 Corning Tower
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Sergey Gabinsky, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 18-202) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board.

Six copies of all papers must also be sent to the attention of Judge Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A solid black rectangular box used to redact the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

SERGEY GABINSKY, M.D.

SUPPLEMENTAL

DETERMINATION

18-202

The New York State Department of Health ("the Petitioner") duly served a Commissioner's Order of Summary Suspension and Notice of Referral Proceeding with Statement of Charges dated February 12, 2014, upon Sergey Gabinsky, M.D., ("the Respondent"). The Respondent was incarcerated at the time, and he did not appear at the April 23, 2014 hearing, either personally or by an attorney. The Petitioner appeared by James E. Dering, Esq., General Counsel, by David W. Quist, Esq., of Counsel. Christine Traskos, Esq., served as the Administrative Officer. Thea Graves Pellman, Chairperson, Michael J. Reichgott, M.D., Ph.D., and Leland Deane, M.D., M.B.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee.

Evidence was received and transcripts of the proceedings on April 23, 2014 were made. The Hearing Committee determined that the Respondent committed professional misconduct under § 6530(9)(a)(ii) of the Education Law, by engaging in conduct that resulted in a conviction under federal law and ordered the revocation of the Respondent's license to practice medicine in New York State. A copy

of the Hearing Committee's Determination and Order, issued on May 16, 2014, is annexed as Appendix I.

In a proceeding pursuant to § 230-c(4)(a) of the Public Health Law, the Respondent asked the Administrative Review Board ("ARB") to review the Hearing Committee's determination. A majority of the ARB found the record was unclear as to what opportunities the Respondent had for presenting evidence from prison for the original hearing, and the ARB remanded the case to provide the Respondent with an opportunity to appear before the Committee and present mitigating evidence.

The Hearing Committee reconvened on July 27, 2018. Ramanathan Raju, M.D., was appointed to replace Dr. Deane who was unavailable to serve. The Respondent appeared in person and was represented by Jacobson Goldberg & Kulb, LLP, by Amy T. Kulb, Esq., of Counsel. The Petitioner appeared by Richard J. Zahnleuter, General Counsel, by David W. Quist, Esq., of Counsel. William J. Lynch, Esq., served as the Administrative Officer.

WITNESSES

For the Petitioner:	None
For the Respondent:	Sergey Gabinsky, M.D. Oleg Sirkis, M.D. Gala Gabrielle Gabinsky

TESTIMONY OF THE WITNESSES

The Respondent testified regarding life events including his having been born in Siberia in the Russian Federation, his attendance

at the Pediatric Academy in St. Petersburg, Russia, his return to work in Siberia, his immigration to the United States in 1989, his residency at New York Methodist Hospital in the pediatric department, and his having become board certified in the medical specialty of pediatrics in 1996. He stated that after working for eight years in the Emergency Department, he opened a private practice in pediatrics in two locations in New York. At the suggestion of his friends, he said that he began a separate business operation involving range of motion and functional capacity tests for patients, most of whom were being treated after motor vehicle accidents. He stated that these tests were performed under his license, but he never saw or examined the approximately 60 patients who were administered these electronic tests each month. Instead, he merely reviewed the paperwork to ensure that there was a referral from a physician and a report sent back. He claimed that he did not pay attention to the business and that a manager was in control. He further alleged that he thought his arrest for fraud in 2012 was a mistake, but that he later understood he was completely responsible for the actions of a company which was in his name, even though others had committed acts behind his back. He pleaded guilty, and he agreed to pay restitution of approximately \$2,000,000. He claimed, however, that he had only received a salary from that business of between \$3,000 and \$7,000 per month for less than two years. After he was released from prison, he took on temporary paid work occasionally as a delivery man and volunteer work with Russian-speaking

elderly people through synagogues. He completed his term of supervised release in January 2017. The Respondent requested that he be given the opportunity to return to the practice of pediatrics in a setting such as a community center under supervision. He stated that he felt terrible about his conduct which hurt insurance companies, and that he understood that possessing a medical license was a privilege.

Dr. Sirkis, who has known the Respondent since 1975 when they met at medical school, testified that the Respondent was a brilliant student who always did his best in school and was a good friend. He stated that the Respondent helped him when he immigrated to the United States and that he worked as a medical assistant in the Respondent's office for approximately three years. He also stated that the Respondent was a good physician who was highly regarded by his patients. Dr Sirkis asserted his belief that the Respondent was an excellent physician who regretted his wrongful actions and deserved a second chance.

Ms. Gabinsky has also known the Respondent since 1975. She stated that they married and had three children together, but they separated in 2000. She explained that they have remained close friends and have suffered several difficulties together including the death of a child and the parental abduction of a grandson. She stated that the Respondent is an honest person and ashamed of his illegal conduct. She urged that he is a highly skilled physician who should be given another opportunity to practice medicine.

HEARING COMMITTEE DETERMINATION

The record established that the Respondent pleaded guilty in federal court to the felony offense of Conspiracy to Commit Health Care Fraud. Fraud in the practice of medicine, standing alone, provides grounds on which to revoke a medical license (see *Galin v. DeBuono*, 259 AD2d 788 [1999]). The Hearing Committee's 2014 Determination and Order imposed revocation as the penalty for the Respondent's misconduct because there was no evidence of remorse or any indication that the Respondent's future behavior would change for the better. As instructed by the ARB, the Hearing Committee has now provided the Respondent with this supplementary hearing to allow him an opportunity to appear and offer mitigating evidence.

Having heard the Respondent's testimony regarding his involvement in the conspiracy to commit health care fraud, the Hearing Committee found that the Respondent understated his knowledge of the illegality of the activity at the time it was committed. The Respondent suggested that he was unaware that the corporation which he created was being used for fraudulent activity, and that he accepted responsibility for the illegal activity only because the corporation was in his name. Instead, the Hearing Committee determined that it was more likely that the Respondent knew the activity was fraudulent when he engaged in the illegal activity, and that he was motivated by greed and a belief that he would not be caught.

The Hearing Committee went on to consider whether the Respondent was remorseful and whether his future behavior would likely improve. The Respondent expressed remorse, but the Hearing Committee was unable to determine whether he felt remorse for his fraudulent conspiracy or for the impact his actions had on his life and his family. The Hearing Committee also was not convinced that the Respondent would not repeat his fraudulent conduct if given the opportunity. This fraudulent conduct does not harm only insurance companies because the cost of health care fraud is typically passed on to policyholders and taxpayers. The Respondent used his position as a licensed physician in this State to conspire to commit this scheme of health care fraud and his criminal conduct violated the public trust (see *Matter of Margini v. DeBuono*, 255 AD2d 640 [1998]).

However, the Hearing Committee noted that the Respondent had already served a significant penalty for his misconduct including the loss of his ability to practice medicine for more than five years. The Committee was also persuaded that the Respondent had been a competent pediatrician who could provide skilled medical services if adequately monitored by another physician. Balancing these various factors, the Hearing Committee decided to impose a penalty which would allow the Respondent to return to the practice of pediatrics while monitored, but prevent him from using his medical license for illegal financial gain.

Having fully reviewed the prior record in this matter and considered the Respondent's testimony and the testimony of his two witnesses, the Hearing Committee unanimously determined that the Respondent should be given the opportunity to return to a highly circumscribed practice of medicine, but that he must be banned from ownership of a professional medical corporation and his license to practice medicine should be permanently limited. In addition, the Respondent must be placed on probation for a period of two years with an approved practice monitor to assess the Respondent's current practice.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. Respondent's license to practice medicine in the State of New York is limited, pursuant to PHL sections 230-a(3) and (6), to ban the Respondent from ownership of a professional medical corporation and to preclude the Respondent, either individually or through a professional corporation, from evaluating, treating or billing patients whose medical services are reimbursed through either No-Fault Insurance or Workers' Compensation;

2. Respondent is placed on probation for a period of two years, pursuant to PHL section 230-a(9), and shall abide by the terms of probation annexed as attachment "A";

3. During the period of probation, Respondent shall practice medicine only when monitored by a licensed physician who is board certified in pediatrics ("practice monitor"), proposed by Respondent and subject to the written approval of the Director of the Office of Professional Medical Conduct ("OPMC");

4. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at his last known address and such service shall be effective upon receipt or seven days after mailing, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: New York, New York
09/07, 2018


Michael J. Reiongott, M.D.
Chairperson

Ramanathan Raju, M.D.
Thea Graves Pellman

To:

David W. Quist, Associate Attorney
Bureau of Professional Medical Conduct
Division of Legal Affairs
New York State Department of Health
2512 Corning Tower
Empire State Plaza
Albany, New York 12237

Amy T. Kulb, Esq.
Jacobson Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 500
Garden City, New York 11530

Sergey Gabinsky, M.D.



ATTACHMENT "A"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).

2. Respondent shall maintain active registration of his license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.

3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204 with the following information, in writing, and ensure that this information is kept current: a full description of his employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.

4. Respondent shall cooperate fully with and respond in a timely manner to OPMC requests to provide written periodic verification of his compliance with these terms. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.

5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in the Determination and Order or as are necessary to protect the public health.

6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or

electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.

7. During the probationary period, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.

a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.

c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.

d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC within 30 days after the effective date of this Order.

8. Respondent shall comply with these probationary terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

APPENDIX I

STATE OF NEW YORK: DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
SERGEY GARINSKY, M.D.

DETERMINATION
AND
ORDER

BPMC #14-130

A hearing was held on April 23, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding and Statement of Charges all dated February 12, 2014, were served upon the Respondent, Sergey Gabinsky, M.D. Pursuant to Section 230(10)(e) of the Public Health Law, Thea Graves Pellman, Chairperson, Leland Deane, M.D., M.B.A., and Michael J. Reichgott, M.D., Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Christine C. Traskos, Esq. Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by James Dering, Esq., General Counsel, by David W. Quist, Esq. of Counsel. The Respondent did not appear and was not represented by counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This proceeding was brought pursuant to Public Health Law Section 230(10). The statute provides for an expedited hearing when a licensee is charged with a violation of

Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In this case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a).

Copies of the Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix I.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Sergey Gabinsky, M.D., the Respondent did not appear although he was duly served. (Petitioner's Ex. 2)

2. Sergey Gabinsky, M.D. the Respondent, was authorized to practice medicine in New York State on June 30, 1995 by the issuance of license number 199910 by the New York State Education Department. (Petitioner's Ex. 3)

3. On February 5, 2013, in the United States District Court, for the Southern District of New York, Respondent pled guilty to Conspiracy to Commit Health Care Fraud (in violation of 18 USC 371), a federal felony. On the same date, Respondent entered into a Consent Order of Forfeiture/Money Judgment in the amount of approximately \$2,000,000, representing the amount of gross proceeds obtained as a result of the criminal activity to which Respondent pled guilty. On September 6, 2013, Respondent was sentenced to a term of 24 months imprisonment with a recommendation that Respondent participate in a residential alcohol treatment program, that Respondent's imprisonment be followed by supervised release for a period of three years subject to conditions, and that Respondent be required to pay a \$100 assessment and approximately \$2,000,000 in restitution. (Petitioner's Ex.4)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION OF MISCONDUCT

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of an act constituting a crime under federal law.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing and offered nothing in the way of mitigation. Respondent was convicted of setting up a corporation in Brooklyn, New York to fraudulently bill no-fault insurance claims to automobile insurance companies. Respondent received unlawful pecuniary benefits for medical care that was not provided to patients. He also abused the public trust that was placed in him as a physician licensed by the State of New York. The Hearing Committee finds no evidence of remorse on part of the Respondent or any indication that his future behavior would change for the better. As a result, the Hearing Committee deems revocation as the only penalty that will protect the people of New York State against this type of misconduct. This determination was reached after due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specification of professional misconduct, as set forth in the Statement of Charges, is SUSTAINED;
2. Respondent's license to practice medicine in New York State is hereby REVOKED;
3. This Order shall be effective upon service on the Respondent by personal service or registered or certified mail in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: West Hempstead, New York

May 16, 2014


Thea Graves Pellman
Chairperson

Leland Deane, M.D., M.B.A.
Michael J. Reichgott, M.D., Ph.D.

TO:

Sergey Gabinsky, M.D. [REDACTED]
FCI Otisville
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